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AN
ENVIRONMENTAL
LAW PRACTICE

November 5, 2001

Brian Nishitani, Esquire (3RC44)
Office of Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

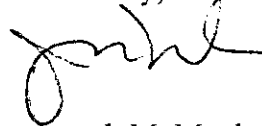
Re: Lower Darby Creek Area Superfund Site - Clearview
Landfill, Folcroft Landfill and Folcroft Landfill Annex

Dear Brian:

Enclosed please find a copy of my letter to you dated October 4, 2001, which I concluded by asking that you call me after you have reviewed it to let me know if there is anything further you need.

Having heard nothing back from you, I assume that it satisfactorily addressed the concerns that were in the §104(e) request.

Sincerely,



Joseph M. Manko
For MANKO, GOLD & KATCHER, LLP

JMM/cc
Enclosure

cc: Ms. Kristine Matzko, EPA
Mr. Larry S. Miller, EPA
Ms. Carlyn Winter Prisk, EPA
Mr. Craig Olewiler, PADEP
Ms. April Flipse, PADEP
Mr. S. Ty Steinberg

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AN
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FOLLOW UP

11/5

October 4, 2001

Brian Nishitani, Esquire (3RC44)
Office of Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Lower Darby Creek Area Superfund Site - Clearview
Landfill, Folcroft Landfill and Folcroft Landfill Annex

Dear Brian:

I am writing this letter in accordance with your suggestion late last month to describe the relationship of my client, MBS Associates ("MBS"), to the above-captioned landfills. In so doing, you agreed to grant me an extension of time from the receipt of Larry Miller's §104(e) request, dated September 14, 2001 (the "104 Request"), until October 15. For clarification, MBS is the Pennsylvania limited partnership which manages properties formerly owned by M. Buten & Sons, Inc. ("Buten") that were not sold in 1994 to Duron Paints & Wallcovering of Beltsville, MD ("Duron").

In preparing this letter, I followed your suggestion that, instead of answering all the various questions set forth in the enclosures to the 104 Request, I could explain the reasons why I believed MBS should not be considered a "responsible person" with regard to the landfills.

Buten was organized in 1897 and began to operate a glass and paint store at 1834 South Street in Philadelphia, subsequently moving its headquarters to 5000 Ridge Avenue in the Manayunk section of Philadelphia. The business grew during the 20th Century, trading under the name of "Buten Paint," "Buten Paint & Wallcoverings" and "Buten, the Paint & Paper People" (see attached articles), until eventually it owned a chain of 30 stores. Buten never manufactured paint, but simply sold national brand paint, wall coverings, glass, painters' equipment and sundries to retail consumers, painting contractors and industrial and commercial buyers.

10/10/01

With regard to the area near Darby Creek, Buten owned and operated two retail stores – one in the Woodlyn area and another in the Darby area. The Darby store operated from the mid-1950s until the present day (taking into account its sale to Duron in 1994), and the Woodlyn retail store opened in the early 1980s. Buten never operated a store at 52nd and Grays Avenue, which is the location of a paint manufacturing facility owned by M.A. Bruder & Sons (“Bruder”). As you can understand, the names Bruder and Buten were often confused, which is why I think the information you received from a hauler that it hauled waste from Buten at 52nd and Grays Avenue was mistaken since he no doubt meant Bruder.

As you can see, since the landfills in question ceased operations in the mid-1970s, there could be no waste from the Woodlyn store, which wasn’t opened until several years later. With respect to the Darby store, I am advised that the only thing that was ever disposed of from that store (or any of Buten’s other stores) would have been cans of paint which had been opened and dried out through evaporation, whereupon they were properly disposed of. (Damaged paint cans were not disposed of but rather were sold at special close out prices). MBS does not have records as to the disposal of waste from the Darby store, but I am assured that disposal was handled by reputable waste haulers.

With regard to the dried out paint cans, I would view them as analogous to the disposal of similar paint cans by homeowners that would, at worst, fall within the category of “household hazardous waste.” (Again, that assumes that the haulers who disposed of Buten’s waste actually put them in one of the above-captioned landfills.)

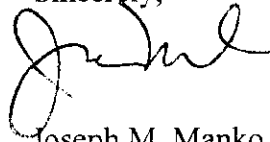
In closing, I would mention two other things. A similar §104(e) request for a Superfund site in northern New Jersey was received by Buten from EPA Region II in the 1980s. After explaining to the appropriate personnel that at most there could have been such dried out cans disposed of by haulers at the North Jersey site, EPA Region II agreed not to proceed with any further investigation or assertion of potential liability for Buten at that site. This sounds exactly the same as the current situation.

Secondly, although the legislation that would exempt small volume disposers has not yet been signed into law, it is clearly slated for approval by the Senate and House of Representatives, and President Bush has agreed to sign the bill (the only thing holding it up in my understanding is the question of the Davis-Bacon applicability for wages of contractors concerned with brownfields redevelopment).

Brian Nishitani, Esquire
October 4, 2001
Page 3

Please give me a call after you have reviewed this letter to let me know if there is anything further you need from my client or me.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Manko", written over a faint horizontal line.

Joseph M. Manko
For MANKO, GOLD & KATCHER, LLP

JMM/law
Enclosure

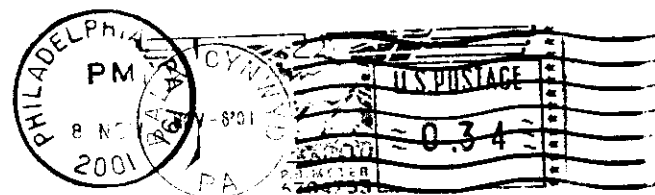
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